IV. The FCC Should Require ILECs to Provision UNEs at the Same Time They Are with Provisioning Collocation

In its Petition, ALTS notes that one of the most severe obstacles to CLECs obtaining loops in a timely manner is the ILEC ordering process, which unnecessarily prohibits CLECs from ordering loops and transmission facilities, including transport and dark fiber, until collocation has been completed.[116] ALTS, therefore, seeks a Commission ruling making clear that CLECs in any region may order all loops and transport in a manner that will enable them to provide service at the time that their collocated equipment is operational.[117] The Commenters fully support this request that the Commission require ILECs to provision UNEs, particularly interoffice transport facilities, at the same time as provisioning collocation.

In the *Collocation Order*, the Commission recognized the significant competitive harm suffered by CLECs whose collocation space is not ready for as long as 6 to 8 months after their initial collocation request is submitted to an ILEC.[118] Likewise, there is significant competitive harm suffered by CLECs when they finally complete collocation and then experience delays in obtaining UNEs. For instance, as noted by ALTS, ILEC literature indicates that the guideline for provisioning DS-1 loops is 45 days.[119] Therefore, collocation provisioning and UNE provisioning can take up to 10 months. Under these present conditions, it is virtually impossible for CLECs to roll out competitive services to consumers in a timely manner.

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[116] ALTS Petition at 9.

[117] *Id.*

[118] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48 (rel. March 31, 1999), *recon pending* ("*Collocation Order*").

[119] *ALTS Petition* at 9. The time frame can be even longer for the provisioning of interoffice transportation facilities, especially if the particular route between two CLEC collocation arrangements needs to be augmented with additional facilities.

In the *Collocation Order*, the FCC held that ILECs cannot refuse to consider an application for collocation space submitted by a competitor while that competitor's state certification is pending, or before the competitor and ILEC have entered into a final interconnection agreement.[120] Similarly, the FCC should conclude here that ILECs cannot refuse a competitor's order for UNEs before completion and turnover of collocation facilities. CLECs should be able to install equipment and obtain loops in the shortest timeframe possible with minimum downtime. Unnecessary delays substantially increase administrative and financial burdens on CLECs, who are forced to adjust internal provisioning plans and customer orders for service. Meanwhile, the ILECs are able to plan and roll out services in the same markets without incurring the same delays. Such a result is contrary to the pro-competitive, non-discriminatory goals of the 1996 Act. The FCC should permit CLECs to order collocation and UNEs at the same time and require ILECs to provision the UNEs consistent with the turnover of collocation facilities. This requirement should be implemented even if the FCC establishes specific intervals within which ILECs must provide collocation.[121]

V. Loop Conditioning Should Be Provided In A Timely Manner And At Forward-looking Costs

A. Loop Conditioning Should Be Provided In A Timely Manner

As noted in the *ALTS' Petition*, UNE loops are the building blocks of a competitive telecommunications services marketplace, yet CLECs remain at the mercy of their ILEC

[120] *Collocation Order* at ¶ 53.

[121] In the *Collocation Order*, the FCC did not adopt specific provisioning intervals, but stated that it retained the authority to do so in the future as it deems necessary. *Collocation Order* at ¶ 54

competitors for timely, non-discriminatory access to UNE loops.[122] As facilities-based providers of advanced services, most notably digital subscriber line (DSL) services, which require access to conditioned loops, the Commenters have a significant interest in seeing the Commission set mandatory federal standards for the conditioning of loops.

The Commission has recognized the link between the encumbered local loops and the ability of consumers to choose between providers of advanced services. For example, in its *Fourth Report and Order,* the Commission stated that:

> [L]ack of access to the high frequency portion of the local loop materially diminishes the ability of competitive LECs to provide certain types of advanced services to residential and small businesses users, delays broad facilities-based market entry, and materially limits the scope and quality of competitor service offerings."[123]

Thus, without unencumbered loops, CLEC provisioning of advanced services is imperiled. Recognizing the importance of developing the advanced services market, the Commission has taken steps to ensure that the benefits of competitive advanced services are available to all Americans. Specifically, it requires ILECs to remove existing encumbrances from copper loops upon the request of a CLEC that wishes to provide advanced services.[124] Moreover, the Commission requires ILECs to remove the encumbrances even if the ILEC itself does not intend to offer DSL services to the customer on the loop.[125]

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[122] *See* ALTS Petition, p. 7.

[123] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Fourth Report and Order (rel. Dec. 9. 1999), ¶ 5 (*Fourth Report and Order).*

[124] *Fourth Report and Order,* ¶ 83.

[125] *Id.*

But if the requirement that ILECs condition loops is to truly encourage competition, the Commission must require that ILECs not merely condition loops, but also condition them in a timely fashion. The lack of a nationwide provisioning standard has allowed ILECs to provide loop conditioning services in an unreasonably slow fashion, thus slowing the introduction of competitive advanced services throughout the nation.[126]

Since the ILEC is also a competitor providing advanced services, it has every incentive to forestall the conditioning of loops. If the Commission does not act promptly to require ILECs to condition loops according to a federally-mandated standard, the ILECs will continue to slow roll the deployment of advanced services by simply taking their time to condition loops. The result will be to ultimately eliminate competition for advanced services by rendering the ILEC in a particular market the only viable provider of advanced services.

B. Loop Conditioning Should Be Provided At Forward-looking Costs

Further, timely provisioning of conditioned loops would be meaningless to a CLEC that cannot afford ILEC's inflated loop conditioning charges. The Commission has recognized that the charges an ILEC will seek to impose to condition copper loops are likely to pose substantial barriers to entry, and could deny consumers the benefits offered by advanced services. Specifically, the Commission has stated:

> [W]e recognize, however, that the charges incumbent LECs impose to condition loops represent sunk costs to the competitive LEC, and that these cost may constitute a barrier to offering xDSL services. We also recognize that incumbent LECs may *have an incentive to inflate the charge for line conditioning by including additional*

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[126] *ALTS Petition*, p. 28.

common and overhead costs, as well as profits.[127]

Thus, the Commission has assigned state commissions the responsibility to review the rates that an ILEC proposes to charge for UNEs such as conditioned loops, and to ensure that those charges comply with the Commission's pricing rules.[128] The Commission has also charged the states to ensure that ILECs do not misuse the Commission's loop conditioning "measures for anti-competitive purposes."[129]

Despite the Commission's mandate that loop conditioning charges comply with forward looking pricing principles, the rates in several states are so outrageous that it often makes more sense for a CLEC to elect not to serve the market than it does to pay the ILEC's inflated loop conditioning rates.[130] The Commission should immediately provide guidance to the states and require pricing that complies with FCC rules because proceedings are now being commenced nation-wide to address this issue.

The interim rates adopted the Texas PUC and the rates adopted by the Connecticut Department of Public Utilities ("Connecticut DPUC") in a Draft Decision, graphically illustrate the urgency of this matter and the magnitude of the problems. In each instance, though the ILEC is owned and controlled by the same company, SBC, the loop conditioning rates bear no relation to one another and are not justified by meaningful differences in the markets at issue. The chart

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[127] *UNE Remand Order*, ¶ 194. (Emphasis supplied).

[128] *Id.*

[129] *Fourth Report and Order*, ¶ 86.

[130] *ALTS Petition* at pp. 29-31.

below illustrates this point by highlighting the respective rates set by the Connecticut DPU and the Texas PUC to condition a loop over 18,000 feet in length.

	Connecticut Draft Decision Rates[131]	InterimTexas Rates[132]
Removal of Repeater	$1,256.62	$16.25
Removal of Bridge Tap	$1,935.34	$24.46
Removal of Load Coil	$1,470.37	$40.55

Clearly the Commission needs to provide guidance to the state commissions on pricing for loop conditioning. Absent such standards, some states will experience the fruits of a competitive advanced services market, while others will not.

Another area where the Commission's specific guidance is needed is with respect to the conditioning of loops less than 18,000 feet in length. While the Commission has specifically recognized that encumbering devices serve no purpose on loops of 18,000 feet or less,[133] ILECs nonetheless to charge CLECs to condition loops under 18,000 feet. This lack of clarity is resulting in a patchwork of conditioning rates for loops under 18,000 feet. For example, Bell Atlantic's CLEC Handbook, which sets the ground rules for CLECs operating in Bell Atlantic's Connecticut service territory (in addition to other service areas), states that ADSL loops that are

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[131] *See* Draft Decision, DPUC Review of the Southern New England Telephone Company's Studies of Unbundled Network Elements Non-Recurring Charges, Docket No. 00-03-19 (rel. June 14, 2000). The Connecticut DPUC's Draft Decision is subject to change based on exceptions, and oral argument was held June 23, 2000. Though not final, the Draft Decision shows the direction in which the Connecticut DPU is leaning, thus underscoring the urgency of Commission action to standardize loop conditioning rates and practices across the country.

[132] *See* Arbitration Award, Docket Nos. 20272 and 20226 (rel. Nov. 1999), pp. 98-102. The interim Texas rates are subject to refund or surcharge upon approval of permanent rates, and SWBT was ordered to submit TELRIC-based loop conditioning cost studies.

[133] *UNE Remand Order*, ¶ 172; *see also Fourth Report and Order*, ¶ 82.

less than 18,000 feet "shall be non-loaded,"[134] while in Connecticut, the Southern New England Telephone Company charges to condition loops between 12,000 and 18,000 feet, but not those less than 12,000 feet. Thus, if a loop is less than 12,000 feet and a load coil is present at 5,000 feet, SNET will not charge for the removal of the load coil. If, however, the loop is longer than 12,000 feet, and there are load coils at 5,000 feet, 7,000 feet, and 15,000 feet, SNET will charge for the removal of all three load coils.

These variations both by length of loop and state are not validated by meaningful marketplace conditions. Rather, they are explained simply by the fact that the Commission's orders regarding the applicability of its forward looking pricing rules need clarification. The Commission should promptly and explicitly hold that loop conditioning charges adhere to TELRIC pricing principles as a matter of law.

VI. Provisioning Standards for DLC and Fiber Loops

A. The Commission Should Preserve CLEC Access to Copper Facilities

The Commenters also support the *ALTS Petition*'s position that the Commission should act to ensure that unbundled copper facilities remain available to competitive advanced services providers rather than being co-opted by the ILECs. Without Commission intervention, the emerging boom in competition for advanced services will be threatened by various ILEC plans that will reduce or eliminate competitive access to copper facilities in numerous markets throughout the country. The deployment of fiber optic loop feeder to widely deployed remote

[134] *See* Bell Atlantic CLEC Handbook, Vol. III, § 2.3.5.1 (at http://www.bellatlantic.com/wholesale/html/handbooks/clec/volume_3/c3s2_3.htm).

terminals is not, in and of itself, detrimental to the development of a competitive advanced services market. ILEC attempts to deny access to such architecture is detrimental.

For instance, SBC intends to deny CLECs wishing to provide integrated voice and data service the ability to access its network at the remote terminal.[135] In addition, SBC admits that collocation space at its remote terminals is scarce, and that spare copper facilities may not always exist.[136] The lack of copper facilities, coupled with a lack of access to the ILEC's newly-deployed architecture, would preclude CLEC deployment of advanced services.

The preservation of competitive access to copper would not impinge upon the ILECs' ability to modernize and expand their network infrastructures or their ability to compete and innovate in the advanced services market. On the contrary, in many cases access could be assured if the ILECs were simply required to ameliorate copper shortages by agreeing to "swap" loops by moving an existing service to fiber in order to free copper facilities. The Commenters urge that all ILECs be required to either allow access to the remote terminals, power, and the front-end copper loop, or allow access to unused copper from the central office to the remote terminal to the extent the ILEC uses fiber for such transport.

The need for Commission action on this point is demonstrated by troubling remarks made by SBC in the proceeding evaluating its Section 271 Texas application. SBC rejected the CLECs concerns about Project Pronto by stating:

> [T]he section 271 process is no place to air hypothetical grievances about a BOC's possible future policies. If a BOC cannot satisfy a section 271 inquiry

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[135] *AT&T SBC 271 Comments, p. 24.*

[136] *Id.*

> based on 'future promises,' then it certainly cannot fail the checklist based on objections to hypothetical future policies.[137]

SBC went on to add that "CLECs are entitled to nondiscriminatory access to the incumbent's existing network, not to a yet unbuilt superior one."[138] SBC's adamant refusal to address legitimate CLEC concerns suggests that the Commission must address this issue, and the ALTS Petition provides this Commission with the opportunity to do so. As ALTS notes, ILECs "cannot circumvent their federal obligations to provide loops to CLECs simply by building a new network with which unbundling is impossible."[139]

B. The Commission Should Preserve Meaningful Access to Subloops

The *UNE Remand Order* determined that, in some circumstances, the unbundling of packet switching is compelled under Section 251(c)(3) of the Act. The Commission found that when ILECs deploy Digital Loop Carriers systems ("DLCs") and when no suitable spare copper facilities are available, the "incumbent LEC can effectively deny competitors entry into the packet switching market."[140] The *UNE Remand Order* requires ILECs to provide unbundled packet switching capability when an ILEC itself provides packet switching over DLC facilities and when it cannot provide a requesting CLEC either collocation at the remote terminal or a suitable copper loop that bypasses the DLC.[141] However, the implementation of the new

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[137] CC Docket 00-65, Reply Brief in Support of Supplemental Application of Southwestern Bell at p. 28. ("*SBC 271 TX Reply Brief*") (citation omitted).

[138] *Id.* (emphasis in original).

[139] *ALTS Petition* at 12.

[140] *UNE Remand Order* at ¶ 313.

[141] *Id.*

requirements has already revealed the need for additional directives from the Commission in order to accomplish the objectives of the *UNE Remand Order*. In particular, the Commission should ensure (1) that a viable bundled packet switching UNE, priced at TELRIC rates, is readily available whenever the conditions of the *UNE Remand Order* are satisfied, and (2) that ILECs are prohibited from suppressing new competitive services by limiting the technologies supported on its packet switching UNE.

Packet switching service should involve three interdependent components: the subloop between the customer premises and the remote terminal ("RT"), the subloop between the RT and the central office, and the use of the multiplexer in the RT. The Commission should require that these three components be offered at a single TELRIC rate, without any "glue charges;" in other words, a form of UNE-P for packet switching.

ILECs should be required to provide, in tariffs or in interconnection agreements, terms and rates for a bundled packet switching service that would be offered consistent with these requirements.

Further, the Commission should prohibit ILECs from constructing their network and wholesale services in a manner that unduly limits the range and types of services a CLEC can offer. In particular, the *ALTS Petition* and comments in the SBC Texas 271 proceeding have noted that SBC's Project Pronto would not accommodate voice-over-DSL and other integrated video and audio telecommunications services.[142] Mpower has already proposed a meaningful set of principles and conditions that the Commission should apply to SBC's deployment of Project

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[142] *ALTS Petition* at pp. 14-16; *AT&T SBC 271 Comments* at p. 24.

Pronto.[143] The Commenters urge the Commission to adapt and apply these principles and conditions to all ILEC deployment of DLCs and fiber in the loop.

VII. The Commission Should Set Federal Penalties For ILEC Noncompliance

In its Petition, ALTS suggests that the Commission adopt federal penalties for ILEC failure to comply with the provisioning rules.[144] The Commenters agree. This Commission has recognized the efficacy of performance measures coupled with monetary penalties as a way to ensure better ILEC performance.[145] The Commission executed a Consent Decree with Bell Atlantic regarding lost and mishandled orders for unbundled network elements submitted by CLECs.[146] Bell Atlantic was required to implement a measurement reporting system and make voluntary payments if certain performance measures were not met.[147]

The Commenters propose that penalties not consist of voluntary contributions to the Treasury but rather reimbursement to CLECs for the competitive harms suffered.[148] Penalties paid to governmental bodies will not be as effective as penalties paid to competitors. This fact is borne out by comparing the effect of the imposition on penalties on two ILECs by their respective state commissions. In Texas, in January and in February of this year, SBC was

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[143] CC Docket No. 98-141, June 6, 2000 *Ex Parte* Letter from Mpower to Carol Mattey, Deputy Chief, Common Carrier Bureau, attached as Exhibit A.

[144] ALTS Petition at 31.

[145] *In the Matter of Bell Atlantic-New York Authorization Under Section 271 of the Communications Act to provide In-Region, InterLATA Service in the State of New York*, Order, FCC 00-92, 15 FCC Rcd. 5413 (March 9, 2000).

[146] *Id.*

[147] *Id.*

[148] *See* 47 U.S.C. § 206.

compelled to pay the Texas State Treasury over $400,000 in Tier 2 penalties.[149] Of these sums, only a paltry amount goes to CLECs, *e.g.*, $450 in December 1999.[150] It is hardly a coincidence, then, that, despite those penalties, SBC performance has failed to meet the measures.[151]

In comparison, in New York, the NY PSC had ordered to Bell Atlantic to make $10 million in rebates to competitors because of electronic ordering problems documented *supra.*[152] Once again, it should be no coincidence that Bell Atlantic has now come into compliance with OSS requirements.[153] It is only when an ILEC has to pay amounts to its competitors that it will have a true incentive to meet performance measures.

The Commenters specifically urge mandatory monetary penalties that will directly compensate CLECs for damages due to inadequacies in loop provisioning as the best way to ensure that ILECs provide nondiscriminatory access. In a non-monopoly market, ILEC non-performance would be penalized by CLECs taking their business to other providers. In the existing market, however, there is no such alternative for CLECs. Only mandatory penalties paid directly to the CLEC will provide true incentive for ILECs to provision up to their capabilities. ALTS suggests self-executing monetary penalties, and, in the context of a declaratory ruling,

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[149] *AT&T SBC 271 Comments* at p. 44. These penalties are "levied only for persistent noncompliance with the most critical measures, and they arise only when SBC's performance has been below the parity or benchmark level for three consecutive months for all CLECs in the aggregate." *Id.*

[150] *Id.*

[151] AT&T notes that despite the penalties SBC is still not close to demonstrating compliance with the Tier 2 measures. *Id.*

[152] Edie Herman, *FCC Decides BA Has Satisfied OSS Requirements in N.Y. State,* Communications Daily, Vol. 20, No. 120, June 21, 2000 at p. 2.

[153] *Id.*

prima facie penalties that would apply by means of a rebuttable presumption in subsequent enforcement or remedial proceedings.[154]

CONCLUSION

The *ALTS Petition* presents this Commission with the opportunity to timely address pressing issues affecting the timeliness and quality of loop provisioning. The Commenters have demonstrated that current ILEC loop provisioning policies and practices are grossly inadequate and pose substantial obstacles to the timely effectuation of the pro-competitive goals of the Telecommunications Act of 1996. The Commenters have also suggested standards for resolving these issues based on the records and approaches developed in recent proceedings.

This Commission can remove the substantial obstacles to effective local competition through the enactment of such national standards for the provisioning of loops coupled with substantial penalties payable to CLECs for ILEC failures to meet those standards. Moreover, without such FCC action, the state commissions, the ILECs, and the CLECs, as well as this Commission, will be forced to expend unnecessarily substantial resources during extensive state-by-state proceedings, rather than devoting these resources to the expeditious implementation of a competitive local services market that affords consumers a real choice of providers and services.

[154] *ALTS Petition* at p. 31..

Local competition urgently needs a jump-start, and the Commission should use its regulatory authority to implement national standards to make that happen.

Respectfully submitted,

Christopher A. Holt
Vice President/Assistant General Counsel
CoreComm Incorporated
110 East 59th Street, 26th Floor
New York, New York
Tel: (212) 906-8485
Fax: (212) 906-8489

Counsel for CoreComm Incorporated

Kent F. Heyman
Senior Vice President & General Counsel
Francis D.R. Coleman
Vice President, Regulatory Affairs
Richard E. Heatter
Vice President, Legal Affairs
Mpower Communications Corp.
171 Sully's Trail - Suite 202
Pittsford, NY 14534
Tel: (716) 218-6568
Fax: (716) 218-0165

Counsel for MGC Communications, Inc.
d/b/a Mpower Communications Corp.

Thomas S. Lyle
Regulatory Affairs Manager
Vitts Networks, Inc.
77 Sundial Avenue
Manchester, NH 03103
Tel: (603) 656-8000
Fax: (603) 656-8100
Vitts Network, Inc.

Helen E. Disenhaus
Eric J. Branfman
Harisha J. Bastiampillai
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007-5116
Tel: (202) 424-7500
Fax: (202) 424-7645

Counsel for CoreComm Incorporated, MGC Communications, Inc. d/b/a Mpower Communications Corp., and Vitts Network, Inc.

June 23, 2000

CERTIFICATE OF SERVICE

I, Harisha Bastiampillai, hereby certify that on this 23rd day of June 2000, copies of the foregoing Comments of CoreComm Incorporated, MGC Communications, Inc. d/b/a Mpower Communications Corp., and Vitts Network, Inc. were delivered by hand to the following:

Harisha Bastiampillai

Janice M. Myles
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W. - Room 5-C327
Washington, DC 20554

International Transcription Services, Inc.
1231 20th Street, N.W.
Washington, DC 20036

Jonathan Askin
General Counsel
Association for Local Telecommunications Services
888 17th Street, N.W. - Suite 900
Washington, DC 20007

Glen B. Manishin
Stephanie A. Joyce
Patton Boggs LLP
2550 M Street, N.W.
Washington, DC 20037

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor to SBC Communications Inc., Transferee	)	CC Docket No. 98-141
	)	
Common Carrier Bureau and Office of Engineering Announce Public Forum on Competitive Access to Next-Generation Remote Terminals	)	NSD-L-00-48 DA 00-891

EXHIBIT A

June 6, 2000 Letter from Counsel for
MGC Communications, Inc. d/b/a Mpower Communications Corporation
To Carol Mattey, Deputy Chief, Common Carrier Bureau
In CC Docket No. 98-141

ORIGINAL

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202)424-7500
FACSIMILE 0

EX PARTE OR LATE FILED

NEW YORK OFFICE
405 LEXINGTON AVENUE
NEW YORK, NY 10174

June 6, 2000

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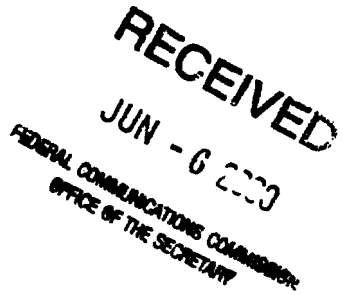

Carol Mattey
Deputy Chief, Common Carrier Bureau
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, DC 20554

Re: *Ex Parte*
"Project Pronto"
CC Docket No. 98-141
ASD File No. 99-49

Dear Ms. Mattey:

MGC Communications, Inc. d/b/a Mpower Communications Corporation ("Mpower") provides DSL services and integrated communications solutions services to business customers nationwide. Mpower had revenues of $55 million in 1999 and is one of the fastest growing technology companies in the United States.

Mpower is vitally interested in assuring that ILEC deployment of new loop technologies is competitively neutral and enhances, rather than restricts, CLECs ability to provide competitive services. Mpower has previously commented on issues concerning SBC's "Project Pronto."

No. of Copies rec'd 0+4
List A B C D E

Carol Mattey
June 6, 2000

In the attached document, Mpower provides conditions that should be imposed on SBC's deployment of Project Pronto. These conditions would assure that ILEC networks are genuinely open to competing service providers.

Sincerely,

Kent F. Heyman
Senior Vice President & General Counsel
Francis D.R. Coleman
Vice President, Regulatory Affairs
Richard E. Heatter
Vice President, Legal Affairs
Mpower Communications Corporation
171 Sully's Trail - Suite 202
Pittsford, NY 14534
(716) 218-6568 (tel)
(716) 218-0165 (fax)

Patrick J. Donovan
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW
Washington, D.C. 20007
Tel. 202-424-7500 (tel)
Fax 202-424-7645 (fax)

Counsel for Mpower Communications Corporation

cc: Michelle Carey
Jake Jennings
Johanna Mikes
Staci Pies
Anthony Dale
Mark Stone
Magalie Roman Salas

Mpower Communications Corp.
CC Docket 98-141
ASD File No. 99-49
June 6, 2000

BUILDING FIBER NETWORKS FOR A COMPETITIVE TOMORROW

We live in the Information Age. Increasingly, consumers and businesses across America want and need access to the Internet. A whole array of exciting new high speed digital services will move on fiber networks. Fiber networks are key to bridging the Digital Divide. They will help educate our children, increase our productivity, and raise our living standards. Fiber networks have the potential to unleash vast new waves of creativity.

It is vitally important that these fiber networks be designed, built, and operated so that they enhance competition. They must not be used to block competition or to rebuild monopolies. Users of these new fiber networks must be able to choose from among competing service providers. They must not be forced back into the digital monopoly version of the old black –one size fits all - dial telephone.

Two conditions are necessary in order to insure that new ILEC networks are open to competing service providers (CLECs). First, the architecture of these networks, and the technology they use, must be "neutral", so that CLECs can use current and future technology to offer competitive choices to customers. Second, CLECs must have operational independence in how they do business on these fiber networks. CLECs should not be required to depend on the ILEC - their competitor - for customer service.

These two conditions translate into six basic requirements:

- The sub-loop, from the Central Office to the Remote Terminal, must be available to the CLEC, regardless of the transmission medium – e.g. fiber or copper. It must be available today on a T-1 or xDSL (including SDSL) UNE basis. It must be available tomorrow for tomorrow's technologies, on a future UNE basis[1]. But always paid for by the CLEC – based on TELRIC pricing..

- The sub-loop, from the Remote Terminal to the customer's premises, must be available to the CLEC, regardless of the transmission medium – e.g. fiber or copper. It must be available today on a POTS and xDSL (including SDSL) UNE basis. It must be available tomorrow for tomorrow's new technologies, on a future UNE basis. But always paid for by the CLEC – based on TELRIC pricing.

- The above two sub-loops must also be available to the CLEC as a single loop from the Central Office to the customer premises, regardless of the transmission media – e.g fiber and copper. It must be available today on a T-1 or xDSL (including SDSL) UNE basis. It must be available tomorrow for tomorrow's technologies, on a future UNE basis. But always paid for by the CLEC – based on TELRIC pricing.

- The CLEC must be able to physically collocate, in the Remote Terminal, any of its equipment that is necessary or useful for interconnection, based on TELRIC pricing, and without space limitations. The Remote Terminal is a part of the network. If more Remote Terminal space is needed, it must be provided by the ILEC, to keep up with customer demand

- Full OSS coverage on the network must be available to the CLEC, as a UNE, based on TELRIC pricing.

- The new network must not be used for commercial purposes by the ILEC until these requirements have been met.

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[1] The term "future UNE basis" means that the ILEC must upgrade the type of UNE that it offers as technology and CLEC needs progress.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
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Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor to SBC Communications Inc., Transferee	)	CC Docket No. 98-141
	)	
Common Carrier Bureau and Office of Engineering Announce Public Forum on Competitive Access to Next-Generation Remote Terminals	)	NSD-L-00-48 DA 00-891

DECLARATION OF BRUCE DYKE
ON BEHALF OF VITTS NETWORK, INC.

1. My name is Bruce Dyke and I am Vice President of Technical Support & Data Services for Vitts Network, Inc. ("Vitts"). I am responsible for ensuring that service connections for Vitts' customers are seamlessly installed and maintained and for providing around-the-clock technical support to all customers. Prior to joining Vitts, I was director of information services at Granite State Management and Resources, and spent 7 years with Cabletron Systems as manager for software support and for their global call center.

2. As part of my duties, I am apprised by my technical staff of the difficulties our company has been experiencing in the provisioning of service by incumbent local exchange carriers ("ILECs"), and, in particular, problems we have been encountering in the maintenance and repair of loops we order from ILECs.

3. The purpose of my declaration is to address problems Vitts has encountered with regard to the maintenance and repair services provided by Bell Atlantic. Vitts obtains unbundled network elements from Bell Atlantic, and, thus is very much affected by Bell Atlantic's inability to provide consistent quality maintenance and repair service on the lines we order from them.

4. Unfortunately, our experience with regard to repairs and maintenance, and the escalation of open trouble tickets, has not been satisfactory. The following examples, which are, in actuality, edited versions of notes taken by Vitts' Technical Assistance personnel as events were unfolding, document a history of poor support provided by Bell Atlantic. These few examples, and numerous other events, which have not been included herein, demonstrate the need for the implementation of standards to govern ILEC repair and maintenance escalation procedures when line troubles are not quickly resolved by ILEC technicians in the field.

Customer A

5. On three separate occasions within the span of a month, Customer A experienced outages. The outages lasted for four, five, and five days respectively. Customer A had to endure multiple missed appointments. Bell Atlantic also improperly closed the trouble ticket while the customer was still out of service. Despite numerous calls on our part, and the length of the outages, the escalation response of Bell Atlantic was poor.

6. Customer A experienced three outages in the time period from January 29, 2000 to February 29, 2000. The cause of the first outage on 1/29/00 was a telephone pole that went down. Bell Atlantic's personnel stated that phone and cable services were down for

one day. However, data services provided by Vitts over Bell Atlantic loops were down for five days before Bell Atlantic could restore service.

7. The second outage occurred on 2/11/00 when the customer's building lost power. The data circuit was down five days due to a defective Bell Atlantic cable.

8. In the third instance, on 2/24/00, the building lost power again. Bell Atlantic refused to go out until we checked our equipment, which Vitts did. The next day, (2/25/00), Bell Atlantic finally opened the trouble ticket, but the Bell Atlantic representative failed to how up at the customer site.

9. On 2/26, Bell Atlantic also failed to appear on site. The ticket was escalated to the supervisor level.

10. On 2/27, a Bell Atlantic service representative finally appeared onsite, and performed some repairs. However, the representative closed the ticket even though the customer was still down. We dispatched a representative, and confirmed that the service was still down.

11. 2/28 – A Bell Atlantic representative was re-dispatched for his first call of the day. At the end of the day, however, there was still no update. The ticket was again escalated to the supervisor level. We were told the problem was a "true" unit (i.e. a Bell Atlantic owned/controlled device) that would be replaced the next day in the central office. We requested a dispatch for that evening, but were told by Bell Atlantic that there is "not a snowball's chance in hell" of getting someone there that evening.

12. 2/29 – Bell Atlantic told us that it had scheduled a technician for the first call out at 8 am. By 11 am, when no technician appeared, and no update was given, we called BA and were told that a tech was being dispatched at that time. After BA replaced the hardware

in the central office, service was finally restored to the customer after five days of outage, at 12:15 pm.

Customer B

13. Customer B experienced 23 days of outage. On three separate occasions, Bell Atlantic closed tickets while the customer was out of service. In addition, Bell Atlantic missed four appointments during the period further delaying efforts to remedy the problem.

14. 11/17/99 -- We submitted a trouble ticket.

15. 11/18/99 – Bell Atlantic opened the trouble ticket. BA replaced a bad card in the central office and closed the ticket despite the customer's service still being down.

16. 11/22/99 – Another trouble ticket was opened- on our request- because the line was not "passing data."

17. 11/24/99 –Bell Atlantic still has not appeared at the customer premise despite our instructions to call the Customer and Vitts Assistance center. The ticket was escalated to the supervisor management level.

18. 11/26/99 – BA replaced a bad card in the Subscriber's Line Interface Circuit ("SLIC"). BA closed the ticket despite the customer's service still being down.

19. 11/29/99 – A new trouble ticket is opened for the third time.

20. 11/30/99 – BA found a defective card in the SLIC (again), replaced it, and closed the ticket. The customer's service was still down. We requested a vendor meeting between a Vitts technician and a Bell Atlantic technician at the customer premise.

21. 12/01/99 -- BA did not show up for the vendor meeting. It was rescheduled for the next day.

22. 12/02/99 – BA failed to show up at the customer site again. BA's response was that they had replaced a bad card in the central office and did not need to attend the vendor meeting. This assertion was made despite the customer's service still being down and despite the agreement for the vendor meet.

23. 12/03/99 – A fourth trouble ticket was opened.

24. 12/04/99 – According to Bell Atlantic, the circuit was mis-configured. Another vendor meeting was needed.

25. 12/06/99 – A vendor meeting was set for next day.

26. 12/07/99 – BA failed to appear again but later in the day, we were informed that they had found a bad cable pair in the central office.

27. 12/08/99 – After 23 days of outage, the customer's service was finally operational.

28. The same themes resurface in regard to this customer as in regard to Customer A. The problem is one within Bell Atlantic's purview, yet it takes many missed appointments, reopened trouble tickets, and many phone calls to get the problem properly addressed. What is particularly frustrating is Bell Atlantic's closing of trouble tickets with the customer's service still down.

Customer C

29. Customer C's service was down for over ten days. Bell Atlantic changed the status of the trouble ticket without notifying us and the change ended up being incorrect. Thus, we had to re-open the ticket the way we did initially. This event, however, caused a two day delay. Bell Atlantic senior management promised that the problem will be fixed. The problem does get fixed but only for an hour and then the customer's service went down

again. Finally, after ten days and no resolution, we converted the customer to a more expensive retail T1.

30. 4/24/00 – A dispatch-out Trouble ticket was opened. ("Dispatch-Out" means a Bell Atlantic technician is dispatched out of the Bell Atlantic Central Office toward the customer premise.)

31. 4/25/00 – We called Bell Atlantic for an update and were told that they changed the status of the ticket to "Open dispatch- in" due to their testing (i.e. Bell Atlantic central office technician is dispatched to test for loop troubles within the central office).

32. 4/26/00 – BA technician was dispatched In. However, the "In" ticket is closed and we are requested by BA to open ticket "Out" which we had originally done on April 24, 2000. The ticket was escalated to senior management at Bell Atlantic and we were promised that circuit would be up that night.

33. After numerous trials, Bell Atlantic found that the problem is due to an adjacent channel unit in the central office that was creating bit errors and negatively affecting the customer's circuit. BA fixed the problem and closed the ticket. The customer's service was running for less than an hour on 4/26 and was then down again.

34. 5/4/00 – The problem was still not resolved and customer had been down for ten days. We converted the customer to a more expensive retail T1, as compared to a wholesale 4 – wire loop.

Customer D

35. Customer D had to undergo one and half months of disruption before fully functional service was resumed. During that time period, Bell Atlantic closed a number of tickets without resolving the problems and missed vendor meet appointments. Once again,

there was also poor escalation on Bell Atlantic's part. Despite the numerous problems this customer experienced, we only reached the director level and that only after numerous calls.

36. 3/24/00 – Bell Atlantic ticket was opened "Out".

37. 3/27/00 – We requested an update from Bell Atlantic.

38. 3/28/00 – BA dispatched technician. BA reports "No Trouble Found" ("NTF").

39. 3/29/00 – BA ticket opened "In". BA replaced card in central office and closed ticket. Customer was still down. A vendor meeting was set up.

40. 3/31/00 – We were told that the ticket is closed so a new ticket will need to be opened. We were told dispatch would be on 4/3/00.

41. 4/4/00 – BA technician failed to appear. BA admitted dropping the ball. BA promised to send a technician on 4/5/00.

42. 4/5/00 – Bell Atlantic technician said everything tested fine and closed ticket. However, the Customer still did not have a connection to the Bell Atlantic Central office.

43. 4/11/00 – Vendor meeting was set up for next day.

44. 4/12/00 – Once again, Bell Atlantic failed to show up. The meeting was rescheduled for the 4/14/00.

45. 4/14/00 – Vitts technician suggested to BA that card installed may also defective as before, however, BA claimed it cannot change out defective card without Telecommunications Information Service Operations Center ("TISOC") permission.

46. 4/18/00 – BA still had not taken action.

47. 4/19/00 – BA closed ticket NTF.

48. 4/21/00 -- Another vendor meeting was set up. Bell Atlantic admitted that it is their issue. The ticket was escalated to management level.

49. 4/24/00 – Another ticket was opened.

50. 4/26/00 – BA closed that ticket - NTF.

51. 4/26/00 – Yet another ticket was opened.

52. 5/1/00 – Ticket was closed NTF. Customer's service was still down. The situation was escalated to the director level.

53. 5/2/00 – BA said it "wants to start from scratch." A new ticket was opened.

54. 5/3/00 – Bell Atlantic technician failed to appear. BA said technician went to the wrong site. BA then called to say they were rewiring in the central office and that the customer should be up by the next day.

55. 5/4/00 – The circuit was finally up, but BA did not tell us what corrective action it took.

56. This process took nearly one and a half months, through which we had to keep explaining to our customer why the problem was not being resolved.

Customer E

57. Customer E experienced service disruption for two weeks. Bell Atlantic would keep opening tickets, but could not determine the cause of the problem. Finally, two weeks later, they found the problem was in their central office.

58. 12/6/99 – Customer's service went down. Bell Atlantic re-punched central office cable pair. Customer's service was restored.

59. 12/7/99 – Customer reported very intermittent operation and connectivity.

60. 12/16/99 – BA claimed to have found a loose cable. The customer was still experiencing problems. We replaced all Vitts equipment at customer's site to see if that solves the "problem", but with no success.

61. 12/17/00 - A trouble ticket was opened "In". BA conducted its tests and then reported back to Vitts that no trouble on circuit was found. BA changed trouble ticket to "Out". BA conducted additional tests and again reported back that NTF. BA changed trouble ticket back to an "In" ticket. BA tested again and again reports NTF. The problem turned out to be that BA's central office ("CO") technician believed the trouble was outside the CO building while BA's outside plant technician believed that the trouble was inside the CO. It was our belief that BA's technicians were not communicating with each other and not conducting a thorough test of the customer's circuit.

62. 12/20/99 – Bell Atlantic resolved the problem in the central office by correcting cross-connects and changing a set of options on an ISDN card.

Customer F

63. Customer F was out of service for ten days. Bell Atlantic mysteriously closed the trouble ticket for no reason. There were two missed appointments on Bell Atlantic's part.

64. 5/22/00 – A trouble ticket was opened "out".

65. 5/23/00 – Customer F calls Vitts Technical Assistance Center for update. Customer reported that circuit has been down all day and has not seen BA technician yet.

66. 5/26/00 – BA service representative informed us that the ticket was closed but did not know why. After explaining to the BA representative this customer has been down for a week, we are told to open another ticket. Another trouble ticket is immediately opened "out" and a vendor meet is scheduled for later in the afternoon. BA technician fails to

appear. Vitts escalates to BA supervisor late in the day due to no show. Another Vendor meet is set up for 5/27/00.

67. 5/27/00 – BA technician failed to appear for vendor meet. Another vendor meet is scheduled for 5/28/00.

68. 5/28/00 – BA technician failed to appear for second vendor meet.

69. 5/30/00 – BA sets up 3rd vendor meeting. During this vendor meet, Vitts' technicians informed BA technicians that problem was with SLIC card in remote terminal ("RT") and not with facilities being tested by BA technicians.

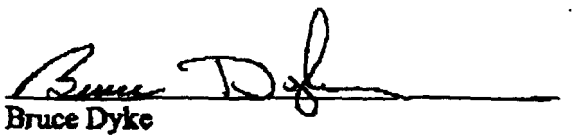
70. 6/1/00 – After ten days, the customer was finally back in service. We were told by BA that the problem was a missing SLIC card located in a nearby RT. Because the customer originally had connectivity when they first ordered service from Vitts but later lost connectivity, it is believed that BA technicians removed the SLIC card for testing purposes but failed to replace the card when the test was completed.

71. These are some examples of the poor maintenance and repair functions Bell Atlantic provides to Vitts. These examples demonstrate a pattern of missed appointments, improperly closed trouble tickets, poor escalation procedures, and Bell Atlantic's general inability to discern and repair problems caused in its facilities in a timely manner.

72. Due to Bell Atlantic's inconsistent service, Vitts' customers often endure long service outages, missed appointments and, regrettably, employee downtime. While BA attempts to resolve its problems, we must exert enormous efforts to keep our customers patient during the long time periods it takes to get BA matters resolved. While the problems stem from Bell Atlantic deficiencies, we are the immediate customer contact. As a result, our customers direct their anger and frustration toward Vitts, not BA. In short, BA's

inconsistent service levels require Vitts to bear monetary and non-monetary costs. In monetary terms, BA's inconsistent services require Vitts to dispatch our own technicians numerous times in order to help BA resolve its problems. In non-monetary terms, our image as a top notch, quality service provider is put in jeopardy every time a BA problem is not resolved in a timely manner.

73. I believe measures need to be implemented to ensure proper, consistent maintenance and repair services are provided by ILECs regardless of whether a CLEC is ordering a wholesale UNE or a retail service. It is my opinion that ILECs need to be held to strict performance standards and be subject to substantial penalties for failure to meet those standards. At a minimum, repair service levels provided by BA on wholesale UNEs must be equal to repair service levels being provided by BA on retail services. Unfortunately, the level of services between wholesale UNEs and retail services are not equal. To date, it has been our experience that trouble tickets opened on more expensive retail services are resolved quickly and accurately.



Bruce Dyke
Vitts Networks Inc.